



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

August 31, 2017

TO: Michigan Court Forms Committee, EPIC Workgroup

FROM: Matthew Walker, Forms and Manuals Analyst

RE: Agenda and Materials for **September 7, 2017 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa St., Lansing, MI 48915

Below is the agenda for the September 7, 2017 meeting of the Michigan Court Forms Committee, EPIC Workgroup. The meeting will be held in room 1S-69. Lunch reservations have been made for you. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa St., Lansing, MI 48915.

Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

1. Minor Changes

MC 304, Order for Alternative Service

“Probate Court” will be removed from the masthead of this form. Draft provided.

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

I oppose the removal of “Probate Court” from the masthead of this form. Civil suits are filed in the Probate Court and are governed by Chapter 2 of the Court Rules,

exactly as in civil suits filed in Circuit Court and District Court. If alternative service is ordered in a Probate Court civil suit it is through MCR 2.105 – just as in Circuit or District Court – and this form, established exactly for that purpose, should reflect as much.

PC 562, Notice of Hearing

The citation to MCR 3.002(5) will be updated to MCR 3.002(12). Standards will be applied. Draft provided.

PC 638b, Order Regarding Termination/Modification of Guardian for Individual with Developmental Disability

A writing space for attorney's name and address will be added to this form, under the judge's date and signature line in accordance with standards. Additional standards will be applied. Draft provided.

PC 678, Notice of Guardianship Proceedings Concerning an Indian Child

The citations to MCR 5.402(E)(5), MCR 5.404(B)(3), and MCR 5.404(C)(2) will be removed from the form because they do not apply to this form. Draft provided.

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

I agree with the removal of the identified rule citations. However, whereas MCR 5.404(B)(3) and (C)(2) are not relevant to this notice I believe 5.404(B)(2) and (C)(1) are in that they call for such notice to be sent. I recommend the latter two citations be added to the bottom of the form.

2. MC 20, Waiver/Suspension of Fees and Costs (Affidavit and Order) **PC 617, Declaration of Intent to Give Notice by Publication**

In 2016, the EPIC Forms Workgroup considered a suggestion to add checkboxes to MC 20 in the order section that would allow the court to waive the costs of service or publication under MCR 2.002(F). Below is an excerpt of the 2016 meeting minutes:

Members explained that the additional checkboxes would streamline processing for probate courts in some counties. If the court waives the costs of service or

publication, the court must produce a separate order for the county funding unit. By combining this order into this form, the court would no longer need to produce a separate order. SCAO pointed out that MCR 2.002(F) requires an ex parte affidavit showing the necessity for publication. Members stated that PC 617, Declaration of Intent to Give Notice by Publication is often filed with the fee waiver, which could satisfy the requirements of MCR 2.002(F). However, members remarked that PC 617 is not an affidavit and therefore does not satisfy the affidavit requirement of MCR 2.002(F). SCAO staff suggested reviewing PC 617 to determine if it could be revised to be an affidavit. The committee agreed, and tabled the discussion.

- A.** Based on the foregoing, modifications to make PC 617 an affidavit instead of a declaration has been suggested. If this suggestion is adopted, it would require the form to be signed before a person authorized to give oaths, i.e. a deputy clerk or notary.

Alternatively, it has been suggested that an affidavit section be added to the form to satisfy the “ex parte affidavit” requirement of MCR 2.002(F). This section would only be utilized when the party is seeking a fee waiver for publication.

Should PC 617 be modified in either manner?

- B.** If PC 617 is modified, it is suggested that MC 20 include the following additional options in the order section:

☐ c. The fees or costs of publication are to be paid by the county or funding unit in which the action is pending pursuant to MCR 2.002(F).

☐ d. The service fees for an official process server are to be paid by the county or funding unit in which the action is pending pursuant to MCR 2.002(F).

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

PC 617 is governed by MCR 5.105(A)(3), which concerns situations in Probate proceedings – NOT civil suits, but petition-based actions – where service is required but the address and whereabouts of the person to be served are unknown. This court rule provision requires an “affidavit or declaration,” and so, since the form is already in the form of a declaration, the governing rule mandates no change.

MC 20 is governed by MCR 2.002(F), which specifically concerns service of process in civil suits. As MCR 2.105 indicates, service of process is relegated to delivery of “a summons and a copy of the complaint.” As such, I do not believe MCR 2.002 implicates MCR 5.105 and procedure regarding Probate proceedings. Also, MC 20 is a general affidavit of indigence and is not specific to costs of publication or process service as opposed to other costs.

For the foregoing reasons, I recommend no changes to these forms.

3. PC 556, Petition and Order for Assignment

Modifications to include an option to deny the petition have been suggested for this form.

Draft provided.

4. PC 565, Testimony to Identify Heirs

PC 650, Petition for Appointment of Limited Guardian of Minor

PC 650 I, Petition for Appointment of Limited Guardian of Indian Child (Voluntary Guardianship)

PC 651, Petition for Appointment of Guardian of Minor

PC 651 Ia, Petition for Appointment of Guardian of Minor Indian Child (Voluntary Guardianship)

PC 651 Ib, Petition for Appointment of Guardian of Minor Indian Child (Involuntary Guardianship)

PC 653, Order Regarding Appointment of Guardian/Limited Guardian of Minor

PC 653 I, Order Regarding Appointment of Guardian/Limited Guardian of a Minor Indian Child

PC 654, Annual Report of Guardian on Condition of Minor

PC 670, Minor Guardianship Social History

PC 675, Petition to Terminate/Modify Guardianship

PC 678, Notice of Guardianship Proceedings Concerning An Indian Child

PC 684, Application and Order for Appointment of Out-of-State Guardian of a Minor

PC 686, Consent by Parent/Indian Custodian to Guardianship of Indian Child

Modifications to these forms are suggested to replace references to “mother” and “father” with “parent” to account for same-sex marriages.

Drafts provided.

5. PC 557, Notice of Intent to Request Informal Appointment of Personal Representative

Modifications are suggested to this form to allow an applicant to list a nominee other than himself or herself as allowed by MCL 700.3301.

Draft provided.

Public Comments:

- George M. Stander
Probate Court Administrator and Probate Register
Ingham County Probate Court

This suggested change raises some complicated issues. Based on the issues raised, I will argue that the relevant statute – MCL 700.3310 (“The applicant shall give notice...of the applicant’s intention to seek an appointment informally to each person...” – should be interpreted to allow for the applicant only to nominate him- or herself as PR.

Initially, it should be noted that a Probate Register in an informal action can only appoint someone who either has ultimate priority for appointment (either by status as will nominee or heir, or through renunciations or nominations) or for which a relevant notice of intent has been served on those required and no petition has been filed within 14 days of such service. [See MCL 700.3208]

The priority for appointment is laid out in statute, and includes those nominated in a will, the surviving spouse as devisee, other devisees, heirs, and, in certain cases, the public administrator and the nominee of a creditor. [See MCL 700.3203] Statute also allows someone with some measure of priority to pass that priority along to a nominee, except in the case of those with priority through nomination in a will; these latter people cannot pass their priority to another by nomination.

As drafted, the form retains this sentence: “This notice is being served upon each person whose right to an appointment is prior or equal to my own.” Tying service to the priority of the applicant could be problematic now.

First, what if someone nominated as a second or third alternate in the will (say a family attorney) files an application and nominates a third party as PR? Typically, this would be a non-starter, since a will-nominee cannot pass along priority. However, as drafted, the form seems to allow such a person to give notice to those with higher nominations in the will, and thereby potentially secure informal

appointment of his or her nominee. This is a case where getting someone appointed under this form is easier than the statute appears to allow.

Second, what if an heir excluded in the will were to apply to have one of the devisees appointed? Obviously, the devisee has a higher priority for appointment than the excluded heir, but the form would direct this heir to give notice to everyone with equal or prior right to him- or herself (the will-excluded heir), which is more onerous than law would otherwise dictate.

What if we tied service to the priority of the nominee? This would create its own problems. First, no unrelated third party could then be nominated since he/she would share the same priority with everyone on Earth. Second, in cases where one with higher priority (say, surviving spouse who is devisee but not will-nominated PR) nominates someone with lower priority (e.g., will-excluded heir), the law allows the spouse to transfer his/her priority, but the form would make the process of getting appointed more onerous.

Irrespective of the reporter's comments at 700.3310, I believe the best way to read the statute is to allow the applicant him- or herself to nominate him- or herself as PR and give notice to all with equal or prior right to appointment. Hence, I oppose the suggested changes.

6. PC 579, Statement and Proof of Claim

It has been suggested that the statement "A hearing will be held to determine whether to allow the claim." be modified to "Upon petition and notice to interested persons, a hearing will be held whether to allow the claim."

The checkbox option on the form is present because MCR 5.307(D) requires that there must be a formal proceeding to allow a claim from a personal representative. The suggester states that a formal proceeding is usually commenced by way of a petition and that the court rule does not require or allow the court to set such a hearing sua sponte. This suggestion came about because a party filed this form and expected that a hearing would be scheduled without any further action on his or her part.

Is a separate petition or motion required for the court to schedule a hearing or does this form serve as the request for hearing? Should the modified language be adopted?

Draft provided.

Public Comments:

- George M. Strander
Probate court Administrator and Probate Register
Ingham County Probate Court

I agree with the suggested revisions – the hearing should require a petition to be filed, and thus will not be held without the filing. I am not sure MCR 5.208(C) is a relevant citation for the form. I suggest including rather MCR 5.208(E) and 5.307(D).

7. PC 564, Proof of Service
PC 583, Account of Fiduciary, Short Form
PC 584, Account of Fiduciary, Long Form

It has been suggested that the writing space for the address lines on PC 564, and the description lines on PC 583 and PC 584 be increased to accept two lines of text.

Should this suggestion be adopted?

Public Comments:

- Raelene O. Reilly
Deputy Probate Register
Alger County Probate Court

One comment: When printing Form PC583 Account of Fiduciary, Short Form from the SCAO website, the form automatically fills in with '0's. Please remove the 0s so we can print and give to the public without having to white out the 0s. Thank you very much for your consideration.

8. PC 621, Receipt of Property from Conservator

It has been suggested that this form be modified to include checkbox options for the recipient of the property to signify under what authority he or she has received the property delivered by the conservator.

This is important because the conservator relies on this document when requesting discharge from his or her duties. The suggester states that conservators are unaware that they are not allowed to deliver property to persons not authorized to receive them.

Should this suggestion be adopted? Draft provided.

Public Comments:

- Cindy Rude
Calhoun County Probate Court Manger/Register

I agree that changes to PC 621 would be helpful. I would propose that changes should occur concurrently to PC 585b (Order Allowing Account) and PC 621 (Receipt of Property from Conservator).

PC 585b, Order Allowing Account, is what governs where (or to whom) the assets should be delivered. I would propose changes to that form (#8) as attached.

PC 621, Receipt of Property from Conservator, should then be changed to reflect the same options.

9. PC 631, Order Regarding Appointment of Guardian of Incapacitated Individual
PC 638a, Order Regarding Termination/Modification of Guardian for Minor or LII/Conservator
PC 640, Order Regarding Appointment of Conservator
PC 653, Order Regarding Appointment of Guardian/Limited Guardian of Minor

It has been suggested that each of these forms be modified to include a checkbox to discharge an attorney and guardian ad litem.

Should this suggestion be adopted?

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

I assume this suggestion is to allow for the quick and easy discharge of the respondent's/ward's guardian ad litem or attorney after the hearing on the petition. If space allows, I am not against providing a check box option for this. I would note, however, that in my experience it is typical that a guardian ad litem is appointed and not a lawyer-guardian ad litem (which is a completely different position, and one that I do not even think is available for adults).

10. PC 633, Letters of Guardianship

Modifications are suggested to the language regarding the annual report on page two of the form. The suggester states that the additional language will make follow-up procedures easier for guardians and the court.

Draft provided.

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

The current language regarding the due date for the annual report, and the new language regarding the reporting dates, seems confusing. It seems we should not be referencing a “date” (month, day, year) but an anniversary day (month, day). Here is a suggestion for the language referenced:

ANNUAL REPORT: Your annual report should cover the period from _____(month,day) from one year to _____(month,day) of the next year. (Use for PC 634 or PC 654.) Each year’s report must be filed with the court within 56 days after the end of the reporting period. In addition, you must serve the report on the ward and interested persons as specified in the Michigan Court Rules and file proof of service with the court.

- Molly Schikora
Washtenaw County Probate Register/Referee

I think it is helpful to capture the month and day of the reporting period, though the draft version is a bit confusing.

I would suggest something like the following:

You must submit an annual report for the period running from the date of your appointment to the same date the following year, and annually for the duration of your appointment, _____ (month/day) to _____ (month/day). Your report is due no later than 56 days after the end of the reporting period, by _____.

11. PC 634, Annual Report of Guardian on Condition of Legally Incapacitated Individual
PC 663, Report of Guardian on Condition of Individual with Developmental Disability

It has been suggested an additional signature line be added to these forms to accommodate dual guardianship situations.

Should this suggestion be adopted?

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

The only concern I have with this proposed change is that the two signature lines be laid out so as to make clear that an additional signature is expected only in the case that there are co-guardians. Otherwise, it is possible that a single guardian will get confused and believe there should be someone else signing.

12. PC 658, Petition for Appointment of Guardian, Individual with Alleged Developmental Disability

Modifications are suggested to item 4 of this form. The suggester would like item 4 to match the format of item 10 of PC 625. The suggester states that it would clarify what is required of pro se litigants.

Should this suggestion be adopted? Please note that this additional information would make the form three pages.

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

I have no objection to using check boxes to guide the petitioner to providing the proper names. However, it should be noted that since the DD petition asks for presumptive heirs, which is slightly different from the standard employed for LII guardianship petitions, the check box list would be a bit different.

13. PC 662, Letters of Guardianship of Individual with Developmental Disability

Modifications are suggested to the language regarding the annual report on page two of the form. The suggester states that the additional language will make follow-up procedures easier for guardians and the court.

It has also been suggested that a writing space for the guardian's phone number be included on the form for ease of reference.

Draft provided.

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

I would suggest using language similar to what I have proposed in relation to PC 633 at 10.

- Molly Schikora
Washtenaw County Probate Register/Referee

I think it is helpful to capture the month and day of the reporting period, though the draft version is a bit confusing.

I would suggest something like the following:

You must submit an annual report for the period running from the date of your appointment to the same date the following year, and annually for the duration of your appointment, _____ (month/day) to _____ (month/day). Your report is due no later than 56 days after the end of the reporting period, by _____.

14. PC 670, Minor Guardianship Social History

Modifications are suggested to replace the minor and guardian's full social security number with only the last four digits. Unless, it is necessary to collect the minor's full social security number on this form, it will be modified pursuant to AO 2006-2 and 2004 PA 454.

It is also suggested that the citation on the form be updated to MCR 5.404(A)(4).

Draft provided.

15. PC 675, Petition to Terminate/Modify Guardianship

In November 2016, a note stating “In limited guardianships, only the parent(s) with a right to custody of the minor may petition to terminate the guardianship.” was removed from this form outside the formal committee process after receiving reports from courts that the note was confusing.

The note was intended to clarify who had authority to file the petition and it mirrored the language of MCL 700.5208(1)(a) which states that the parents or the sole parent with a right to custody of the minor can petition to terminate a limited guardianship. However, it was not interpreted the same by all courts. A majority of courts interpreted this statute to mean that only a parent who has been granted custody under the Child Custody Act (MCL 722.21 et seq.) can petition to terminate a limited guardianship. Other courts interpreted this statute to mean that all parents can petition to terminate the guardianship as long as their parental rights have not been terminated—denying a parent the ability to seek termination of the guardianship is a de facto termination of parental rights.

SCAO is publishing this issue to confirm that the decision to remove the note was proper. If it is determined it is necessary to reinstate a note, the language, “Note: In limited minor guardianships, you cannot file this petition if your parental rights have been terminated.” is suggested.

Draft provided.

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

The proposal here confuses the ideas of custody and parental rights. For instance, just because a legal parent has had his or her custody rights lessened or removed that does not mean that the person is no longer a parent.

The suggested language should not be added, not only because it does not reflect the statutory standard, but also a biological parent whose rights have been terminated is no longer a mandated interested party (let alone someone without standing to petition for termination).

The old note should be re-added to the form. This contained the exact statutory standard, and it should be emphasized in these cases. The solution for courts being confused about what the statute is requiring of them is not to avoid mentioning the statutory standard; rather, it is training.

16. New Form: Petition for Complete Estate Settlement

It has been suggested that forms PC 593, Petition for Complete Estate Settlement, Testacy Previously Adjudicated and PC 594, Petition for Adjudication of Testacy and Complete Estate Settlement be combined into one form. The suggester states that the proposed combined form will assist petitioners in filing the correct petition, reducing adjournments and delays in finalizing estate administrations.

The proposed form eliminates item 4 on PC 593 and PC 594, which states “The time for presenting claims that arose prior to the decedent’s death has expired.” The suggester states that this statement is unnecessary because MCL 700.3952(1) covers this requirement.

The proposed form also eliminates item 8 on PC 594, which states “The decedent’s will informally probated on _____ in _____ County.” The suggester states that this item is not required under MCL 700.3402 or MCL 700.3301.

Should this suggestion be adopted? If yes, form PC 593 and PC 594 will be deleted.

Draft provided.

Public Comments:

- George M. Strander
Probate Court Administrator and Probate Register
Ingham County Probate Court

I have no in principal objection to combining the current two complete estate settlement petitions. However, I certainly would retain the statement that the time for presenting claims that arose prior to the decedent’s death has expired. Not only is this a cue to the petitioner to ensure that this is true prior to filing, but it is also a cue to the Probate Court to verify this prior to accepting the petition for filing.

Additionally, I would think it is somewhat relevant to a request to admit a will formally that the same document was already admitted informally. After all, if a PR was appointed and the will admitted informally, all interested persons would have received notice of the will’s admission through the PR’s Notice of Appointment. If no subsequent petition for probate was received in order to challenge the admitted will this would seem to be relevant to this later kind of request where the court is asked formally to deem the will valid.

17. New Form: Petition to Exercise Personal Representative's Powers

A probate judge has suggested creation of a SCAO-approved form to allow a conservator to petition to exercise the personal representative's powers. The suggester believes that a SCAO-approved form will help to standardize practice.

MCL 700.5426(4) states that:

If within 42 days after the protected individual's death another person is not appointed personal representative and an application or petition for appointment is not before the court, the conservator may petition to exercise a personal representative's powers and duties in order to be able to proceed to administer and distribute the decedent's estate.

Should this suggestion be adopted? If so, should an order also be developed?

18. New Form: Order of Investigation and Notice of Hearing on Guardianship of Indian Child

MCR 5.402(E)(5) mandates the creation and use of a SCAO-approved form when a court discovers that a child may be an Indian child after a guardianship is ordered. A new form is proposed for this purpose. Another option is to modify existing forms PC 635, Order Appointing Person to Review/Investigate Guardianship and PC 678, Notice of Guardianship Proceedings Concerning an Indian Child.

Draft provided.

19. New Form: Order Regarding Supervised Administration

SCAO analysts have suggested that a new form be created for courts to use when ordering supervised administration under MCR 5.310(B) and MCL 700.3502 when testacy and appointment have been previously adjudicated. This order would correspond to PC 560, Petition for Supervised Administration After Previous Adjudication.

SCAO analysts think that a SCAO-approved form would be useful to facilitate caseload reporting. An order will assist court clerks to identify cases that should be reported under line 9 of the probate court caseload collection form.

Draft provided. Is it necessary to include an item for removal and appointment of a personal representative or special personal representative on this form when circumstances warrant?